ATTORNEY FOR APPELLANT:

ZACHARY A. WITTE
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J. T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

TISO T. MARTIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0610-CR-508
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0605-FB-78

June 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Tiso T. Martin was convicted of confinement as a Class B felony.[1] He appeals his conviction contending that the evidence was insufficient to support his conviction as a Class B felony because he did not use a deadly weapon to commit the crime.

We affirm.

Facts and Procedural History

Martin and Tamora Jones lived together. On the evening of April 30, 2006, they had an argument which ended with Jones telling Martin that she did not think the relationship was going to work and that they could not be together. The argument escalated the next morning when Jones awakened. Martin pulled the covers off of her, dragged her off the bed, pinned her down, and straddled her. He grabbed her face and squeezed "really tightly." He pulled her by the hair and dropped her head repeatedly and forcefully to the floor. He used a knife to cut off Jones' clothes, telling her that she "better be careful, this knife is sharp, you know it's sharp."

Martin was charged and convicted of confinement, interference with reporting a crime, and domestic battery. The trial court sentenced Jones to concurrent sentences totaling twelve years. Martin appeals only his confinement conviction.

Discussion

Ind. Code § 35-42-3-3 provides that a "person who knowingly or intentionally . . . confines another person without the other person's consent . . . commits criminal confinement" and that the offense is elevated to a Class B felony if it "is committed while armed with a deadly weapon . . . ." Ind. Code § 35-41-1-8 defines "deadly weapon" as

[1] *See* Ind. Code § 35-42-3-3(b)(2)(A)

> (1) A loaded or unloaded firearm.
> (2) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.
> (3) An animal (as defined in IC 35-46-3-3) that is:
> (A) readily capable of causing serious bodily injury; and
> (B) used in the commission or attempted commission of a crime.
> (4) A biological disease, virus, or organism that is capable of causing serious bodily injury.

Martin contends the evidence is insufficient to convict him of confinement as a Class B felony because a knife is not included in the definition of a deadly weapon set forth at Ind. Code § 35-41-1-8 and because there was no evidence that he used the knife to commit the confinement and that he only used the knife to cut off Jones' clothing. We reject both arguments.

First, although the word "knife" is not specifically set forth in the statutory definition of deadly weapon, there is no question that it is a weapon that is "readily capable of causing serious bodily injury." Martin himself acknowledged this when he told Jones during the course of the encounter, "Be careful, this knife is sharp, you know it's sharp." Moreover, this court has held on a number of occasions that a knife is a deadly weapon. *See Hall v. State*, 831 N.E.2d 823, 827 (Ind. Ct. App. 2005) *trans. denied.*

Secondly, Martin misconstrues the statute when he argues that he did not use the knife to commit the confinement, but only used it only to cut off Jones' clothing. The statute, Ind. Code § 35-42-3-3, does not require that the defendant use the weapon to commit the crime, only that the defendant commit the confinement while armed with a deadly weapon. *See Mallard v. State*, 816 N.E.2d 53, 57 (Ind. Ct. App. 2004) *trans. denied.* Martin was "armed

with a deadly weapon" when he committed the confinement. Moreover, he "used" the knife to commit the offense by telling Jones to be careful and that she knew the knife was sharp.

The evidence was sufficient to support Martin's conviction of criminal confinement as a Class B felony, and we affirm his conviction.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.